Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Petition of the Alliance for Public Technology	)	
Requesting Issuance of Notice of Inquiry and	)	
Notice of Proposed Rulemaking to Implement	)	RM 9244
Section 706 of The 1996 Telecommunications Act	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation opposes the above-captioned petition of the Alliance for Public Technology, in which APT seeks initiation of an inquiry and a rulemaking proceeding looking towards various actions that it claims would encourage widespread deployment of advanced telecommunications capabilities. Sprint takes issue both with the premises underlying APT's petition and the actions it wishes the Commission to take.

To begin with, Sprint believes APT is flatly wrong in accusing the Commission (at 13) of dereliction of duty in implementing §706 of the Telecommunications Act of 1996.[1] After accusing the Commission of a "pattern of inaction" (at 13), ATP asserts (id.):

> The clear thrust of §706 is to place the Commission's immediate focus on accelerating Infrastructure investment for advanced telecommunications facilities – not to wait thirty months, and then start an inquiry.

In point of fact, the Commission has faced and met numerous statutory deadlines imposed in the 1996 Act, and many of its actions – had they been allowed to work –

[1] This section is codified at 47 U.S.C. Section 157 Note. All subsequent references in these comments to other statutory provisions will refer to provisions of the Communications Act of 1934, as amended.

would have enhanced the availability of advance infrastructure throughout the country. As for implementing §706, however, nothing in the plain terms of that section requires the Commission to take any specific action until 30 months after the date of enactment, and then, all it must do is simply to initiate a notice of inquiry. See §706(b).

Sprint also disagrees with APT's underlying premise (at 8-12) that the Commission's actions to open up the local market to competition have been misguided or detract from achieving the objectives of §706. The fact that competition is slower to develop than some had hoped or anticipated and the fact that the 8th Circuit's decisions have created uncertainty and delay (Petition at 9-10) are realities that cannot be laid at the feet of the Commission. Competition does not happen overnight. It took several years before effective competition emerged in the long distance market, and it can be expected to take several years to develop in the local market as well. As Chairman Kennard recently observed: [2]

> For the reality is that moving a monopoly market to competition is hard work: for the incumbent, the new competitors, and policy makers. Those within companies charged with creating and meeting competition need to resolve complex operational issues. They need to design system interfaces and write software. They need to negotiate contracts, arbitrate differences, sign agreements and implement them. For policy makers, we must insist that this hard work be done and that the parties create or have available swift, meaningful ways to enforce obligations under these agreements.
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> All this takes time.

[2] Statement of William E. Kennard before the Subcommittee on Commerce, Justice, State, and the Judiciary, Committee on Appropriations, United States House of Representatives, on the Federal Communications Commission's Fiscal Year 1999 Budget Estimates, March 25, 1998, at 8.

And anytime important economic interests are at stake, parties are going to litigate. No matter how the Commission would have decided its Local Competition proceeding, its decision would have been challenged in the Court of Appeals and parties adversely affected by the Court of Appeals' decision would have sought Supreme Court review.

Sprint also takes issue with APT's contention (at 10) that the Commission's Local Competition decision – specifically, the adoption of TELRIC pricing for unbundled network elements – has "markedly discouraged facilities-based competition." Sprint can speak from experience – from the time when much of its long distance operations were dependent on resale of AT&T's services – that any carrier wishing to become a nationwide, full-range player in the market will want to have its own facilities. This is particularly true when the ILECs continue to be the virtual sole-source suppliers of local facilities in the vast majority of the nation. The TELRIC standard is one that is fair to the legitimate interests of ILECs and CLECs and is an economically sound approach to pricing unbundled network elements. If no party can build local facilities at a cost less than the ILECs' TELRIC, then encouraging facilities-based competition by setting rates for UNEs at a higher level would do nothing to further competition. Any CLEC that entered the market by building facilities that are more costly than the forward-looking costs of the ILECs would not be able to survive ILEC competition in the long run. To artificially encourage facilities-based entry by setting UNE rates above a TELRIC level would merely be a cruel joke on those who were induced to enter on the basis of such rates.

As for the question (posed at 12) whether UNE pricing of combinations of elements discourages investment in advanced telecommunications capabilities, the simple answer is that under the Commission's pricing standards for UNEs, the RBOCs recover all of their costs, and make a handsome profit as well. A guaranteed 11.25% return is one that many firms in competitive markets would envy.

Sprint also disagrees with the actions APT proposes for encouraging deployment of advanced telecommunications capabilities. First, APT's proposals (at 15-22) to apply the provisions of §251(c) only to the existing ILEC network, and adopt sunsets or phase-outs of the availability of unbundled network elements, TELRIC pricing, and §251(c) itself before effective local competition has clearly developed, are beyond the Commission's power. There is nothing in §706 or its legislative history to suggest that its reference to forbearance was intended to be a substantive grant of forbearance authority, independent of §10. And §10 prohibits forbearance from §251(c) until that section has been "fully implemented." Even if §706 were deemed independent of §10, Commission action under §706(a) must be consistent with the public interest, and the constraints imposed by Congress in §10 inform the Commission as to the public interest factors to be considered in acting under §706. Specifically, the provisions of §251(c), which imposes detailed interconnection obligations on incumbent local exchange carriers, are clearly at the forefront of Congress' view as to the limitations on activities of ILECs that are required by the public interest. Indeed, it was for this reason that Congress, in §10(d) of the Act, expressly precluded forbearance from this provision until it has been "fully implemented."

Other suggested measures (at 22-27), such as guaranteed recovery of the ILECs' embedded historical costs and greater pricing flexibility and even price deregulation for ILECs, look more like a wish list for the RBOC industry than a studied plan to bring the benefits of advanced technological capabilities to the broadest number of people. This is hardly surprising, since APT has been heavily funded by the RBOCs. In essence, APT is arguing that by getting rid of measures necessary to open the local market to competition and by taking a step away from forcing access rates to underlying economic costs, the Commission will be employing measures that have a sort of shock effect to spur others into the market. That is akin to throwing a newborn baby into a lake in hopes that it will learn to swim before it drowns.

APT also requests the imposition of access charges on ISPs at a level that is acceptable to ISPs. While APT disclaims an intent to impose on ISPs the existing access charges that IXCs must now pay (at 25), it does not seem interested in ensuring that these access charges are likewise reduced to a reasonable level that is acceptable to IXCs. Sprint continues to believe that once the access charges are reduced to forward looking costs, the whole issue of whether the Internet industry is being given a "free ride" will become largely, and perhaps completely, moot.

APT also proposes a list of measures designed to affirmatively encourage investment in advanced telecommunications capabilities. First, APT proposes (at 29-33) allowing reductions in the price cap productivity factor dependent on ILEC promises to invest in advanced telecommunications capability. The only effect of this measure would be to increase the access charges that would otherwise be paid by IXCs so as to cross-subsidize investment by ILECs in advanced services. As discussed above, there is no

reason to believe that under the present system, ILECs do not have adequate incentives to invest in advanced telecommunications capabilities, and a cross-subsidization of such investment by IXCs is wholly unwarranted. Indeed, it would be classic monopoly behavior for the RBOCs to pledge to invest if price caps are relaxed. Competitive companies invest their earnings in the future, and customers decide whether to reward them with earnings. Monopolies refuse to spend their guaranteed earnings unless they get something in return. APT's suggestion is evidence that the local markets are not competitive and should not be exempted from regulation.

Next, APT (at 33-34) wishes the Commission to impose conditions on mergers and acquisitions that are consistent with the objectives to §706. Its thrust seems to be to require the parties to such transactions to commit to deploying advanced services to all segments of the market, not just to high-end customers. However, the Commission cannot repeal basic laws of economics. If it is most cost-effective to deploy new technology to the high-end segment of the market first, carriers should be expected to do so. Once carriers begin deploying advanced services on a broad scale to high-end users, it can be expected that unit costs for the necessary equipment and facilities will begin to come down and it will become more economic to deploy them on a broader basis. To artificially require deployment without regard to the laws of supply and demand may well retard, rather than promote, such deployment.

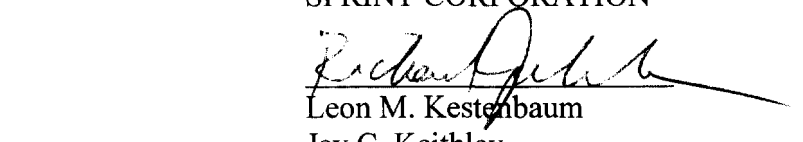
Finally, APT asks the Commission (at 34-41) to establish a joint federal-state policy framework for encouraging partnerships between community organizations and carriers in various ways that will stimulate demand for advanced services by consumers. With all due respect to the intentions and aims of this proposal, Sprint does not believe

that it is the proper role of this Commission to engage in the degree of local "community-building" political activity and social engineering that APT contemplates.

For the foregoing reason Sprint urges the Commission to deny the petition of APT.

Respectfully submitted,

SPRINT CORPORATION



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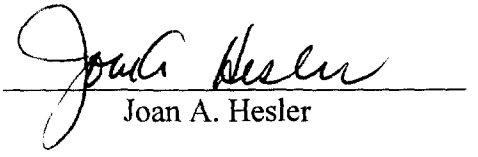
April 13, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 13th day of April, 1998 to the below-listed parties:



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